

THE REMARKS

The Amendment

Claims 1 and 6 are amended to be dependent claims of Claim 8.

New Claim 14 is supported by Claim 8 as filed.

New Claim 15 is supported by Example 7.

New Claim 16 is supported by Example 9.

No new matter is added in the amendments. The Examiner is requested to enter the amendment.

The Response

In response to the restriction requirement, Applicants are electing Group III, Claims 8-11, which are drawn to a R(+)-2-amino-3-hydroxypropanoic acid derivative of formula (III), **with traverse**. Applicants respectfully submit that Claim 12 is a compound claim, not a pharmaceutical composition claim. Claim 12 should belong to Group III, and be examined together with Claims 8-11.

Special Technical Feature

Applicants have amended Claims 1 and 6 to be dependent claims of Claim 8. Formula III compounds are novel and inventive.

USPN 6,228,875 (Tsai) discloses D-serine ester, in which either the carboxy group of D-serine is converted to the ester group by C₁₋₂₀ alcohol, or the amino group of D-serine is alkylated by C₁₋₂₀ alkyl (see Column 7, lines 4-23).

Claim 8 is directed to a R(+)-2-amino-3-hydroxypropanoic acid derivative of formula (III), in which R' is a hydrogen, a phenyl(C₂-C₆)alkenyl, gem-diphenyl(C₁-C₆)alkyl group other than benzhydryl, gem-diphenyl(C₂-C₆)alkenyl. **R' does not include C₁₋₂₀ alkyl (Tsai).** Claim 8 also has a proviso that when R and R' are both hydrogen, then R" is other than a hydrogen, (C₁-C₆)alkyl or non-substituted benzyl; **such proviso excludes C₁₋₂₀ alkyl D-serine ester of Tsai.**

Therefore, Claim 8 is novel and inventive over Tsai.

Markush Group

The Examiner requests that Applicant elect a specific compound, and states that this requirement is not to be taken as an election of species, but rather as an election of a single invention. Applicant is electing Compound of Claim 16 with **traverse**.

Claim 8 has a core structure of 2-amino-3-hydroxypropanoic acid; only R' and R'' are shown as Markush groups.

MPEP 803.02 states, "If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require provisional election of a single species."

MPEP 803.02 further states, "Since the decisions in *In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and *In re Haas*, 580 F.2d 461, 198 USPQ 334 (CCPA 1978), it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. *In re Harnisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and *Ex parte Hozumi*, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature essential to that utility."

The members of the Markush groups R' and R'' in Claim 8 are (1) sufficiently few in number, and (2) **are so closely related (e.g. alkyl, alkenyl, phenyl, etc.)**, that a search and examination of the entire claim can be made without serious burden.

Further, Formula III compounds included within the Markush group **share a common utility of treating cognitive disorders, and share a substantial core structural feature essential to that utility.**

Therefore, Applicant strongly requests that the Examiner examine the entire Markush group of Formula III compounds.

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Respectfully submitted,



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